

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No.2512 of 1986
Date of Decision: 05.09.2007

Gian Chand

.... Petitioner

versus

Ashok Kumar & ors

.... Respondens

Before: Hon'ble Mr. Justice R.S. Madan

Present: None for the petitioner.

R.S. Madan, J

1. This civil revision petition is directed against the order dated 8.05.1986 passed by Sub-Judge, First Class, Phillaur, in a suit filed by the plaintiff for recovery of Rs.5500/- i.e. Rs.4770.20/- ps as principal and Rs.729.80 ps as interest from the defendant on the basis of the record and passbook bearing A/C No.1144 maintained by the Sangatpur Co-operative Agriculture Society and issued to the plaintiff.

2. Brief facts of the case are that plaintiff purchased fertilisers between the period 6.07.1982 to 19.07.1982 from the respondent- Sangatpur Co-operative Agriculture Society and he issued a cheque No.245922 in favour of the society which was given to cashier (defendant No.1) of the society in his individual capacity. The amount of cheque was to be credited in the account of the plaintiff but defendant No.1 misappropriated the said cheque and did not credit the amount in the

account of the society. The plaintiff again took a loan from the society and on 25.11.1982, he cleared of the loan and paid Rs.6865.80/- to the society through defendant No.1. Out of this amount, an amount of Rs.5554.60 was adjusted against the principal while an amount of Rs.251.20 was adjusted against the interest.

3. The plaintiff further averred that he also paid a sum of Rs.1060/- to defendant No.1 on behalf of the society in cash as the cheque No.245922 was misplaced by respondent No.1 (cashier of the society). Necessary entries were also made in the passbook of the plaintiff. But later on it came to the notice of the plaintiff that defendant No.1 has misappropriated the amount of cheque by utilising the same in his individual capacity.

4. It is further the case of the plaintiff that he never purchased any fertiliser on 20.12.1982 nor signed any document for having received any loan from the society but the defendant No.1 has shown the cheque bearing No.245922 on 22.12.1982. The defendant No.1 has misappropriated the amount of Rs.5500/- which necessitated the plaintiff to file the suit for recovery of the said amount against the defendants.

5. Upon notice, defendants filed written statement and projected the additional objection that the Civil Court does not have jurisdiction to try the present suit. On the basis of this objection, a preliminary issue was framed by the Sub-Judge 1st Class. .

6. The parties were given full opportunity to lead evidence in this matter.

7. The learned Sub-Judge, First Class, Phillaur construing the arguments put forth by the learned counsel for the parties, was of the view that provision of Section 55 read with Section 82 of the Punjab Co-operative Societies Act, 1961 are clear and it lays down that if any dispute is touching the business of the society arises that would be referred to an

arbitrator and the Civil Court would have no jurisdiction to try this matter. It is further laid down in the Section 55 that if any question arises regarding any dispute the matter shall be referred to Registrar of the Society and his decision shall be final in the matter, which will not be called in question in any court.

8. In view of the statutory provision of the Punjab Co-operative Societies Act, 1961, the learned Sub-Judge, First Class, Phillaur was of the opinion that the Civil Court has no jurisdiction to try the suit and dismissed the same for want of jurisdiction.

9. Aggrieved by the impugned order, the plaintiff has now come in Civil Revision before this Court.

10. Heard.

11. In **Mam Raj vs. State of Haryana reported as 1982 PLJ 84**, it was observed by a Full Bench of this Court that where there is a dispute between a co-operative society on one hand and an employee, member or agent of the society on the other hand, the dispute falls within the ambit of Arbitration and the jurisdiction of the Civil Court is barred in the present case, the petitioner wanted to get the amount of Rs.5500/- adjusted to the account of the society which he has raised for the purpose of purchasing fertilisers and signed certain documents, therefore, the provision of Section 55 and 82 of the Society Act are applicable in the present case.

12. In this view of the matter, since the matter of loan touches the core business of the society and the same is between a member on the one hand and the society on the other, therefore, it is referable to the Arbitrator and in case of dispute it shall be referred to Registrar of the society whose decision shall be final.

13. This Court is of the view that the observation of the trial court is perfectly valid, legal and without any infirmity and by no stretch of imagination it can be held that the Civil Court has jurisdiction to try the suit.

14. This Civil Revision is without any merit, therefore, it is dismissed.

(R.S. Madan)
Judge

05.09.2007
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